

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL PATTON,

Plaintiff,

v.

ESA P PORTFOLIO, L.L.C., et al.,

Defendants.

No. 1:20-cv-01498-DAD-SKO

ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR LEAVE TO
FILE AN AMENDED COMPLAINT

(Doc. No. 25)

This matter is before the court on plaintiff's unopposed motion for leave to file an amended complaint. (Doc. No. 25.) Defendants filed a statement of non-opposition to plaintiff's pending motion on October 19, 2021. (Doc. No. 31.) Pursuant to General Order No. 617 addressing the public health emergency posed by the COVID-19 pandemic, plaintiff's motion was taken under submission on the papers. (Doc. No. 26.)

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it or (B) if the pleading is one to which a responsive pleading is required, 21 days after service if a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a). Otherwise, a party must seek leave of court to amend a pleading or receive the opposing party's written consent. *Id.*

The Federal Rules of Civil Procedure provide that leave to amend pleadings "shall be freely given when justice so requires." *Id.* Nevertheless, leave to amend need not be granted

1 when the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces
2 an undue delay in litigation; or (4) is futile. *See AmerisourceBergen Corp. v. Dialysist W. Inc.*,
3 465 F.3d 946, 951 (9th Cir. 2006) (citing *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999)).
4 “Prejudice to the opposing party is the most important factor.” *Jackson v. Bank of Haw.*, 902
5 F.3d 1385, 1397 (9th Cir. 1990) (citing *Zenith Radio Corp. v. Hazeltine Research Inc.*, 401 U.S.
6 321, 330–31 (1971)). “The party opposing leave to amend bears the burden of showing
7 prejudice.” *Serpa v. SBC Telecomms.*, 318 F. Supp. 2d 865, 870 (N.D. Cal. 2004) (citing *DCD*
8 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987)).

9 Here, by filing a statement of non-opposition to plaintiff’s motion for leave to file a first
10 amended complaint, defendants have effectively provided plaintiff with their written consent.
11 (Doc. No. 31.) In addition, by not opposing plaintiff’s motion, defendants essentially concede
12 that they are not prejudiced by the court granting plaintiff leave to amend his complaint.

13 Accordingly:

- 14 1. Plaintiff’s unopposed motion for leave to file a first amended complaint (Doc. No.
15 25) is granted; and
- 16 2. **The Clerk of the Court is directed to file the proposed first amended**
17 **complaint (Doc. No. 25-1) on the docket captioned as the first amended**
18 **complaint.**

19 IT IS SO ORDERED.

20 Dated: **December 4, 2021**

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23 UNITED STATES DISTRICT JUDGE
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